

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DANIELLE C. HENDRICKS,

Plaintiff,

-against-

6:23-CV-569 (LEK/ML)

JUDGE SABA, *Utica City Criminal Court*,

Defendant.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Plaintiff Danielle Hendricks brings this pro se action pursuant to 42 U.S.C. § 1983 against Judge Saba of the Utica City Criminal Court. Plaintiff seems to allege that Defendant subjected her to a term of civil confinement at a psychiatric hospital, during which her son was taken from her custody by child protective services and she was charged with neglect. See Dkt. No. 1 (“Complaint”) at 2–3; see also Dkt. No. 7 at 2. Plaintiff has filed a motion for leave to proceed *in forma pauperis*, Dkt. No. 2 (“IFP Application”), and a motion for appointment of counsel, Dkt. No. 3 (“Counsel Motion”). The Honorable Miroslav Lovric, United States Magistrate Judge, issued an Order and Report-Recommendation addressing the Complaint, IFP Application, and Counsel Motion. Dkt. No. 7 (“Report and Recommendation”). Judge Lovric (1) granted Plaintiff’s IFP Application, (2) denied Plaintiff’s Counsel Motion, and (3) recommended that this Court dismiss the Complaint in its entirety. See R. & R. at 8–9.

No party has filed objections to the Report and Recommendation. For the reasons that follow, the Court adopts the Report and Recommendation in its entirety.

II. BACKGROUND

The Court assumes familiarity with Judge Lovric’s Report and Recommendation, as well as with Plaintiff’s factual allegations as detailed therein. See id. at 2.

III. STANDARD OF REVIEW

“Within fourteen days after being served with a copy [of the Magistrate Judge’s report and recommendation], any party may serve and file written objections to such proposed findings and recommendations as provided by rules of the court.” 28 U.S.C. § 636(b)(1)(C); see also L.R. 72.1. However, if no objections are made, a district court need only review a report and recommendation for clear error.¹ See DiPilato v. 7-Eleven, Inc., 662 F. Supp. 2d 333, 339 (S.D.N.Y. 2009) (“The district court may adopt those portions of a report and recommendation to which no timely objections have been made, provided no clear error is apparent from the face of the record.”). Clear error “is present when upon review of the entire record, the court is left with the definite and firm conviction that a mistake has been committed.” Rivera v. Fed. Bureau of Prisons, 368 F. Supp. 3d 741, 744 (S.D.N.Y. 2019). Additionally, a district court will ordinarily refuse to consider an argument that could have been, but was not, presented to the magistrate judge in the first instance. See Hubbard v. Kelley, 752 F. Supp. 2d 311, 312–13 (W.D.N.Y. 2009) (“In this circuit, it is established law that a district judge will not consider new arguments raised in objections to a magistrate judge’s report and recommendation that could have been raised before the magistrate but were not.” (internal quotation marks omitted)). Upon review, a

¹ The Court notes that the Report-Recommendation was returned undeliverable on August 25, 2023. Dkt. No. 8. Under Federal Rule of Civil Procedure 5(b)(2)(C), service of the Report-Recommendation was complete upon its mailing to Plaintiff’s last known address. Plaintiff has not filed any updated notice of change of address, and the burden is on litigants to so notify the Court. See L.R. 10.1(C)(2).

court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C).

IV. DISCUSSION

No party objected to the Report and Recommendation “[w]ithin fourteen days after being served with a copy” of it. 28 U.S.C. § 636(b)(1)(C). Accordingly, the Court reviews the Report and Recommendation for clear error. Having found none, the Court approves and adopts the Report and Recommendation in its entirety.

V. CONCLUSION

Accordingly, it is hereby:

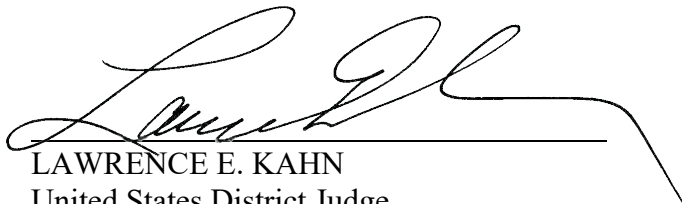
ORDERED, that the Report and Recommendation (Dkt. No. 7) is **APPROVED and ADOPTED in its entirety**; and it is further

ORDERED, that Plaintiff’s Complaint (Dkt. No. 1) is **DISMISSED without prejudice and without leave to amend** pursuant to 28 U.S.C. § 1915(e)(2)(B) because it seeks monetary relief from Defendant, who is immune from such relief; and it is further

ORDERED, that the Clerk serve a copy of this Memorandum-Decision and Order on all parties in accordance with the Local Rules.

IT IS SO ORDERED.

DATED: October 25, 2023
Albany, New York


LAWRENCE E. KAHN
United States District Judge